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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,051	02/12/2002	William R. Palmer	1471.075	8642
21917	7590	10/06/2005	EXAMINER	
MCHALE & SLAVIN, P.A. 2855 PGA BLVD PALM BEACH GARDENS, FL 33410			METZMAIER, DANIEL S	
			ART UNIT	PAPER NUMBER
			1712	

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/076,051

Applicant(s)

PALMER ET AL.

Examiner

Daniel S. Metzmaier

Art Unit

1712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 July & 23 Aug. 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Claims 1-50 are pending.

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 25, 2005 has been entered.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-12 and 26-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen et al, US 5,173,218. Cohen et al (column 1, line 51; to column 2, line 7; column 2, lines 44 et seq; column 3, lines 12-36 and 40; column 4, lines 13 et seq; column 5, lines 66; examples and claims) discloses the formation of a porous flexible plasticized structure (column 1, lines 53 et seq) employing chemiluminescent compositions with multiple particle size distributions of polymeric particles. Cohen et al (column 3, lines 13-36) discloses methods of making the materials and characterizes the slurry compositions as capable of being cast, molded, extruded and blow molded. Said characterization appears to be consistent with a "fluidized solid" as claimed.

Cohen et al differs from the claims in the characterization of the slurry composition as a "fluidized solid" and functional language defining the amount of second particulate effective to yield a fluidized solid admixture.

Cohen et al (examples, particularly example 1) discloses the formation of a thick paste of a fine particle size (200 nm to 1.5 microns) followed by curing and the addition of a second particle size (medium size 70-75 microns and large 150 microns) to form a very thick smooth mixture.

It would have been obvious to one of ordinary skilled in the art at the time of applicants' invention to employ paste or thixotropic slurries with the multiple particle size polymers disclosed in the Cohen et al reference as very thick smooth mixtures.

5. Claims 13-25 and 37-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen et al, US 5,173,218, as applied to claims 1-12 and 25-37 above, and further in view of Holland et al, US 5,158,349, and Roberts, US 3,808,414.

Cohen et al further differs from claims 13-25 and 37-45 in the multidimensional chemiluminescent reactive system wherein the reactants are separate until the desired time of use.

Holland et al (figures and columns 2-5) and Roberts (figures and column 2, lines 1-37, particularly 16-20) disclose chemiluminescent package systems include systems having multiple compartments that may be open to mixing reactive components.

Holland et al discloses concentric tubules, wherein when the inner tubule is ruptured, the chemiluminescent materials react resulting in chemiluminescence.

Roberts discloses a package, wherein when the clip is removed the reactive components mix and react resulting in chemiluminescence.

These references are combinable because they teach chemiluminescent compositions, methods of making and packaging therefore. It would have been obvious to one of ordinary skilled in the art at the time of applicants' invention to employ multicomponent packages of Holland et al and Roberts for the Cohen et al materials to form a chemiluminescent effect and the advantage of storage and preserving said chemiluminescent effect until a desired time.

### ***Response to Arguments***

6. Applicant's arguments filed July 25, 2005 have been fully considered but they are not persuasive.

7. Applicants assert the Cohen et al reference discloses a paste and a slurry rather than the instant claims to a moist, packable and formable powder. This has not been deemed persuasive since the difference between the paste and the moist, packable, formable powder instantly claimed appears to be a difference in degree rather than kind. Cohen et al '218 contemplates variations in porosity, absorption properties, and product physical appearance (column 4, lines 24-34, particularly lines 31-34). Variation in the solvent concentration for the Cohen et al contemplated variations would have been within the level of one having ordinary skill in the art at the time of applicants' invention.
8. Applicants have further not proffered any evidence that the asserted distinction is critical and/or unexpected in view of the Cohen et al reference.
9. Applicants assert the secondary references do remedy the alleged deficiencies of the Cohen et al reference. These alleged deficiencies have been addressed.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (571) 272-1089. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1712

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Daniel S. Metzmaier  
Primary Examiner  
Art Unit 1712

DSM